

## **REMARKS**

The instant application has Claims 1, 7-10 and 45-47 pending. The Applicants appreciatively acknowledge that the Examiner has allowed Claim 1. Nonetheless, the Examiner has provided two rejections and one objection that are rebutted in the following order:

- I. Claims 8-10 and 45 are rejected under 35 USC § 102(b) as allegedly anticipated by Tang et al. WO 02/059260.
- II. Claims 7-10 and 46-47 are rejected under 35 USC § 112 ¶ 2 as allegedly being indefinite.
- III. Claims 8-10 are Objected To.

### **I. SEQ ID NO: 6 Is Not Anticipated By Tang et al.**

The Examiner states that Claims 8-10 and 45 are rejected because Tang et al.:

... teach the Seq. Id. No. 118 which contains a fragment between base pairs 121-657 which is identical with all the Seq. Id. No.: 6 claimed in the instant Application.

*Office Action pg 4.* The Applicants disagree. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have canceled Claim 45. Claim 8 has been concomitantly amended in order to maintain proper antecedent basis. These amendments are made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

The Examiner is respectfully requested to withdraw the present rejection.

## **II. The Claims Are Not Indefinite**

The Examiner states that:

It is unclear if the nucleic acid claimed in the claim 7 is a sequence that has the SEQ ID NO:15 linked to the SEQ ID NO: 3 ... or ... actually an integral part of SEQ ID NO: 3 ...

*Office Action pg 3 ¶ 8.* The Applicants disagree and argue that one having ordinary skill in the art would understand that the term “further” means that additional nucleic acid sequence(s) are present in SEQ ID NO: 3, without regard for their actual positioning relative to SEQ ID NO: 15. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have amended Claim 7 to delete the term “further”. Claim 1 encompasses additional sequences related to SEQ ID NO: 15 by the term ‘comprising’, therefore Claim 7 as now amended is clear. This amendment is made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

Further, the Examiner states that:

With regard to the claims 46 and 47 it is unclear what is the provenience of the recited exons 3, 4, 7 and 8 since no SEQ ID NO is provided and no gene is mentioned ...

*Office Action pg 3 ¶ 8.* The Applicants disagree and point out that exons 3, 4, 7 and 8 are clearly shown in Figure 5, wherein these exon are plainly identified as IL-32 exons residing on chromosome 16p13.3. Nonetheless, without acquiescing to the Examiner's argument but to further the prosecution, and hereby expressly reserving the right to prosecute the original (or similar) claims, Applicants have canceled Claims 46 and 47. These cancellations are made not to acquiesce to the Examiner's argument but only to further the Applicants' business interests, better define one embodiment and expedite the prosecution of this application.

### **III. Claims 8-10 Are Not Objectionable**

The Examiner states that:

Claim 8-10 are objected to for depending on rejected claims. If Applicant redrafts claims 8-10 so as they no longer depend from the rejected claim 45, they would be allowable.


*Office Action, pg. 5.* The Applicants believe that the above cancellation of Claim 45, done for other reasons, moot this present objection. Consequently, the Applicants now believe that Claims 8-10 do not depend from a rejected claim and are allowable. The Examiner is respectfully requested to withdraw the present rejection.

### **CONCLUSION**

The Applicants believe that the arguments and claim amendments set forth above traverse the Examiner's rejections and, therefore, request that all grounds for rejection be withdrawn for the reasons set above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 781-828-9870.

Date: February 5, 2009

By: \_\_\_\_\_

  
Thomas C. Howerton, J.D., Ph.D.  
Registration No. 48,650

MEDLEN & CARROLL, LLP  
101 Howard Street, Suite 350  
San Francisco, California 94105  
781-828-9870